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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

MAY 26 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of )

The Telephone Consumer Protection )  
Act of 1991 )

CC Docket No. 92-90

To: The Commission

COMMENTS OF  
AMERICAN FINANCIAL SERVICES ASSOCIATION

The AMERICAN FINANCIAL SERVICES ASSOCIATION (hereinafter "AFSA"), hereby submits comments in response to the Commission's Notice of Proposed Rulemaking (hereinafter "NPRM") initiating this proceeding (FCC 92-176 released April 17, 1992). The Commission's NPRM was mandated by the Telephone Consumer Protection Act of 1991 (hereinafter "TCPA") which was enacted on December 20, 1991. For its comments, AFSA states as follows:

1. AFSA is the nation's largest trade association representing nonbank providers of consumer financial services. Organized in 1916, AFSA represents 367 companies operating 10,910 offices engaged in the extension of \$190 billion of consumer credit throughout the United States. These companies range from independently-owned consumer finance offices to the nation's largest financial services, retail and automobile companies.

2. Among AFSA's members are several diversified and non-diversified financial services companies which utilize telemarketing programs extensively in the conduct of their

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marketing and promotional programs. Many AFSA members also use interstate telephone facilities, as well as automatic telephone dialing systems to conduct their own debt collection activities.

3. The telemarketing programs utilized by AFSA members are generally associated with the marketing and promotion of financial products including credit cards, personal loans, and ancillary products. These promotional programs are designed to increase consumers' brand awareness and knowledge of the company's financial products and services. A particular product or service is often offered to the consumer. The intense competition between financial services providers makes telemarketing an effective marketing and promotional technique for many AFSA members.

#### Calls to Former or Existing Clientele

4. AFSA strongly concurs with the Commission that the privacy rights that the TCPA intended to protect are not adversely affected where the called party has or had a voluntary business relationship with the caller. The Commission has sought comment on what qualifies as a 'business relationship' and how the terms "prior" and "current" should be distinguished.

5. AFSA believes that the term "business relationship" should encompass any transaction, negotiation, application, or inquiry between the caller and the called party. Any relationship between the caller and the called party which

lacks these elements should be evaluated according to the particular facts and circumstances giving rise to the connection between the parties to ascertain if, indeed, a genuine business relationship does exist.

6. An authorized caller should be recognized as including any company which has "acquired" a business relationship with the consumer through an inter-company transaction. For example, a consumer may have a credit card issued through a financial institution which subsequently sells its credit card accounts to a second financial institution. The second financial institution should be recognized as having a genuine business relationship with the consumer, even though the consumer did not personally initiate the relationship with the second financial institution.

7. Similarly, a caller should be recognized as having established a business relationship with a consumer even where the consumer may not necessarily be cognizant of the relationship. For example, several AFSA members operate "private-label" credit card programs on behalf of third-party merchants. A local hardware store may offer credit cards to its customers which, to the customer, appears to be issued and serviced by the store itself. In reality, the servicing of the account, for various cost-efficiency reasons, is often performed by a financial institution which does not publicize

its role in the transaction. When the consumer completes a sales transaction with the merchant, he has also initiated a credit transaction with the third-party financial institution by using the private-label card. As long as a genuine business transaction, negotiation, application, or inquiry has occurred between the caller and the called party, the test for the existence of a business relationship should per se be deemed to be met. In the case of a financial institution which services "private-label" cards on behalf of other merchants, a business relationship should be recognized between that financial institution and the users of the cards for purposes of the rule.

8. The existence of a "prior" business relationship should be reasonably construed by the Commission. The Commission should not attempt to set strict parameters regarding "prior business relationships" but, instead, should require a caller seeking to rely upon such a relationship to demonstrate, if challenged, a reasonable basis for its reliance. If the Commission does decide to establish elapsed-time guidelines, it should recognize the unique attributes of certain financial transactions. One example is a person who has taken a loan from a financial institution. This person should be recognized as a current customer for the duration of the loan term, not just for the period in which the closing of the loan occurred. Likewise, a person who possesses a credit card but hasn't used it for a long period of time, should still be recognized as having a current business relationship with the card issuer as long as the account is regarded as "active".

### Debt Collection Practices

9. While AFSA fully concurs with the Commission's decision to include debt collection calls within the "business relationship" exemption of the proposed rule, we urge the Commission to also clarify that such calls fall within the scope of the "prior express consent" exceptions set forth in the proposed rule. AFSA submits, for example, that a consumer's entry into a loan agreement should prompt the reasonable expectation by that consumer that he or she will be contacted if the loan agreement terms are not met. The Commission should expressly acknowledge that "prior express consent" may be construed from the existence of certain current business relationships, including loan agreements.

10. AFSA believes that it was Congress' clear intent in the TCPA to recognize that debt collection calls were not in the category of calls for which protection was necessary. However, it is very important that the Commission definitively conclude that a debt collection call does not adversely affect the privacy concerns that the TCPA seeks to protect. In order to do this, AFSA requests that the Commission promulgate an express exemption for debt collection calls in the final rule.

11. In addition, AFSA is concerned with the Commission's conclusions regarding the interplay between the TCPA and the Fair Debt Collection Practices Act. If a debt collection call is placed to a number provided by a debtor, AFSA believes that

a creditor , or its collection agent, must reasonably determine that the individual receiving the call is, in fact, the debtor, before disclosing the identity of the creditor. AFSA urges the Commission to clearly reconcile the two statutes if it is concluded that a straight exemption for debt collection calls is not warranted in the rule.

#### Use of Auto Dialers

12. Most of AFSA members which utilize auto dialing systems operate them in a "predictive" mode, where telephone calls are directed in an efficient manner to specific telephone numbers utilized by individuals who either have business relationships with the caller, or have given the caller an indication of interest in receiving information from the caller. The use of such auto-dialing equipment should not be construed to infringe on the privacy interests which the TCPA was intended to protect. The final rule should draw a clear distinction between predictive dialing and the automated delivery of a recorded message.

13. AFSA supports the Commission's proposal on prohibited uses of auto dialers and the disconnect requirements of such devices. However, the Commission should clarify the prohibition against using automatic dialing systems or artificial or prerecorded voices to call an "elderly home or

similar establishment", (Sec. 64.1100(A)(1)(ii)). The term "elderly home" is excessively broad and could be construed as including any senior citizens' residence in which the residents are not under nursing care. The term should be clarified to cover only those establishments which exclusively provide nursing care to elderly residents.

#### Telephone Solicitations to Residential Subscribers

14. AFSA supports the goal of the Commission to protect residential telephone subscribers' privacy rights to avoid receiving unwanted telephone solicitations. We applaud any efforts to accomplish this objective while preserving the ability to accomplish legitimate business activities. The Commission's proposal, as currently set forth, will greatly curtail, if not eliminate any continued use of telemarketing practices which presently invade the privacy of residential telephone subscribers. While Congress has authorized the Commission to implement a regulatory mechanism to further protect the privacy rights of consumers, AFSA urges the Commission to refrain from mandating a comprehensive system to further restrain telemarketing until the effectiveness of its current proposals can be evaluated.


15. If the Commission concludes that further restrictions are necessary immediately, AFSA can support only one of the

five regulatory alternatives suggested in the NPRM. The company specific do-not-call lists is the only alternative which can be implemented in a relatively short period of time, is not unduly cumbersome or expensive, and can be maintained in a flexible manner. Therefore, if the Commission deems it necessary to mandate one of the five suggested regulatory mechanisms for further restricting telemarketing calls, we strongly urge that the designated method be company specific do-not-call lists.

Respectfully submitted

AMERICAN FINANCIAL SERVICES ASSOCIATION

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